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**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**

Order Instituting Rulemaking to Consider
Regulating Telecommunications Services
Used by Incarcerated People.

Rulemaking 20-10-002
(Filed October 6, 2020)

**OPENING COMMENTS OF GLOBAL TEL*LINK CORPORATION (U 5680 C) TO
ORDER INSTITUTING RULEMAKING 20-10-002**

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In accordance with Rule 6.2 of the California Public Utilities Commission (“Commission”) Rules of Practice and Procedure (“Rules”), Global Tel*Link Corporation (“GTL”) hereby submits these opening comments in response to the Order Instituting Rulemaking adopted on October 6, 2020, in the above-captioned proceeding (“OIR”). As a telephone corporation holding a current certificate of public convenience and necessity approved by the Commission,¹ GTL is a named respondent to this proceeding.

I. INTRODUCTION

GTL is a leading provider of inmate calling services (“ICS”), software, and equipment to correctional facilities across the nation. Founded more than 25 years ago, and currently operating in all 50 states, the District of Columbia, and Puerto Rico, GTL serves some 2,300 correctional facilities, which range in size from ten-inmate county jails to state and federal maximum-security systems with average daily populations of tens of thousands of individuals.

¹ See A.96-05-017, *Application of Global Tel*Link Corporation for a Certificate of Convenience and Necessity to Operate as a Reseller of InterLATA and IntraLATA Telecommunications Service Within the State of California*, D.96-09-078 (Sept. 20, 1996).

GTL offers integrated packages of technology on a contractual basis to meet the demands of each of its correctional facility customers, tailored to fit its unique security and public safety needs. Drawing upon GTL’s diverse suite of offerings –phone, video visitation services (“VVS”), and tablets; investigative tools; jail management systems, and rehabilitative programs – prisons and jails can design communications, educational, and security solutions responsive to the specific needs of their inmate populations. Most recently, GTL has initiated a new program that provides weekly free calls, messages, or video visits to all incarcerated individuals located in correctional facilities served by GTL.² Under this new program, GTL has provided over 12 million free calls to incarcerated individuals throughout the United States (in addition to the millions of free calls provided as part of GTL’s efforts to address the COVID-19 pandemic).³

GTL serves a variety of institutions within the State of California, running the gamut of inmate population size, security levels, and budgetary requirements. It has provided inmate/ward telephone services to the California Department of Corrections and Rehabilitation (“CDCR”) for over two decades, providing inmates consistent access to high-quality and technologically sophisticated communications systems and flexible payment channels to their friends and family members. GTL is thus well-equipped to assist the Commission in considering whether and what regulatory steps are needed “to ensure incarcerated people and their families have access to

² See, e.g., Successfully Connecting Families – GTL and Correctional Facilities Working Together to Implement Permanent Free Weekly Communication Program (Oct. 1, 2020), https://www.gtl.net/about-us/press-andnews/successfully_connecting_families_with_free_weekly_communication_program/.

³ See, e.g., Respecting the Journey During National Recovery Month – Helping Incarcerated Individuals Manage Mental Health and Substance Abuse Disorders (Sept. 17, 2020), https://www.gtl.net/about-us/press-andnews/respecting_the_journey_during_national_recovery_month/; Reentry Spotlight: EDWINS (Sept. 2, 2020), https://www.gtl.net/reentry_spotlight_edwins/; Reentry Spotlight: The LOHM (Aug. 14, 2020), https://www.gtl.net/reentry_spotlight_the_lohm/.

intrastate telecommunication service at just and reasonable rates,” as set forth in OIR.

II. RESPONSES TO QUESTIONS POSED IN THE OIR

The OIR sets forth four scoping questions for comment by respondents and other interested parties. GTL addresses each in turn below.

1. **Should the Commission exercise its authority to regulate the companies that provide those telecommunications services to incarcerated minors and people in California and, if so, how?**

The Commission’s current telecommunications service provider regulatory framework provides for robust transparency, ensures quality and continuity of service, and provides for ongoing oversight. Under statute, ICS providers are directed by statute to make a full and accurate disclosure of their “identity, service options, pricing, and terms and conditions of service”⁴ through tariff and comply with service quality and regulatory complaint procedures;⁵ the Commission, in turn, possesses the authority, as set forth Rule 5.1, to initiate investigations of apparent deviation from or noncompliance with these requirements.⁶ To this end, GTL believes that the current regulatory framework, as applicable to all telecommunications service providers, should be maintained, as it facilitates the Commission’s goals of ensuring fair and affordable access to ICS while providing a fair and flexible environment for full competition, in the best interests of California consumers.⁷

The Commission enjoys broad authority to “do all things . . . necessary and convenient”

⁴ Cal. Pub. Util. Code § 2896(a).

⁵ See Cal. Pub. Util. Code § 2896(c)-(d).

⁶ Cf. Cal. Pub. Util. Code §§ 451, 489(a), 532, 2890(a), 2896.

⁷ See California Public Utilities Commission, Telecommunications & Broadband, <https://www.cpuc.ca.gov/communications/>.

in its supervision and regulation of public utilities.⁸ Inasmuch as it has promulgated regulation in the interest of consumers in the past, the Commission has also relied upon competition as a means amongst telecommunications carriers of ensuring just and reasonable prices and services for consumers.⁹ This approach accords with long-standing imperatives in the intrastate telecommunications to pursue “a path of relaxed regulation” and “use technologically and competitively neutral measures in order to encourage the development of new technologies.”¹⁰ It also reflects the statutory recognition of “free, open, and transparent competition” as “the essence of the American economic system of private enterprise,” exclusively through which “free markets, reasonable and just prices, free entry into business, and opportunities for the expression and growth of personal initiative and individual judgment [are] ensured.”¹¹ GTL supports the Commission’s reliance on competition, not new or expanded regulation, to continue to drive the ICS marketplace in California.

While previously the Commission has not issued a substantive decision on ICS rates and charges, its treatment of the consumer-facing telecommunications market is instructive. In Investigation 15-11-007, the Commission analyzed the intermodal voice market in California, following its implementation of the Universal Regulatory Framework (“URF”) in 2006, and the

⁸ Cal. Pub. Util. Code § 701.

⁹ *Cf.* Cal. Pub. Util. Code § 451.

¹⁰ R.05-04-005, *Order Instituting Rulemaking on the Commission’s Own Motion to Assess and Revise the Regulation of Telecommunications Utilities*, D.06-08-030, Opinion, 4-5 (rel. Aug. 30, 2006); *see also* R.06-06-028, *Order Instituting Rulemaking into the Review of the California High Cost Fund B Program*, D.08-09-042, Decision Adopting Phased Transition Plan for Pricing Basic Telephone Service (rel. Sept. 24, 2008).

¹¹ Cal. Pub. Util. Code § 8281(a); *cf. Sale v. Railroad Commission*, 15 Cal. 2d 612, 617, 104 P.2d 38, 41 (1940) (purpose of the Commission is “to protect the people of the state from the consequences of destructive competition and monopoly in the public service industries”).

need for additional regulation to ensure just and reasonable rates. In the resulting Decision, the Commission noted the deleterious effects blunt-force regulation historically had on interstate telecommunications; a “public utility rate-of-return model,” intended to curb the excesses of the Bell system, actually “strengthened the AT&T monopoly on local and long-distance telephony.”¹²

Regulation, the Commission recognized, should not be imposed without “a rigorous examination of the telecommunications marketplace to analyze the competitive forces acting upon traditional landline services.”¹³ Pursuant to the URF, the Commission emphasized the importance of examining this marketplace according to three key questions: “(i) Is the voice market sufficiently competitive to ensure that customers receive satisfactory service at just and reasonable rates? (ii) To what extent is the larger telecommunications market (in which voice is embedded) competitive? And (iii) Is the market innovating and delivering services that meet the needs of consumers today and in the future?”¹⁴ With a decade’s worth of experience, the Commission realized “there is no ‘one size fits all’ answer to this question for the entire state,” such that “a meaningful answer” to the aforementioned inquiries necessitated a consideration of “geographic and demographic differences.”¹⁵

¹² I.15-11-007, *Order Instituting Investigation into the State of Competition Among Telecommunications Providers in California, and to Consider and Resolve Questions Raised in the Limited Rehearing of Decision 08-09-042*, D.16-12-025, Decision Analyzing the California Telecommunications Market and Directing Staff to Continue Data Gathering, Monitoring and Reporting on the Market, 25-26 (rel. Dec. 8, 2016) (“*Competition Order*”).

¹³ *Competition Order* at 175 (internal quotation marks omitted).

¹⁴ *Competition Order* at 32-33.

¹⁵ *Competition Order* at 33 (“The competitive conditions that exist in a densely populated area like the Los Angeles basin differ considerably from those existing in a sparsely populated area like Shasta County.”).

Although inmate calling services (“ICS”) are not wholly equivalent to the general public consumer-facing telecommunications services because incarcerated individuals, as the Commission observes, cannot select the provider that serves their correctional facility – the importance of undertaking a similarly nuanced inquiry cannot be overstated. As discussed herein, correctional facilities rates and charges reflect a complex balance between funding the deployment of advanced communications and security technologies; the specific needs of individual correctional facilities, according to factors such as population size, site geography, and institutional security concerns; governing body policies and budgets; and the ability of technically capable and sufficient capable providers to afford inmates and their families and friends with reliable communications services. Heavy-handed regulation, applied according to a facial perusal of ICS rates and charges or a mistaken comparison with traditional telecommunications service, would upset these arrangements, to the detriment of public safety and the welfare of inmates alike.

In this context, close attention should also be paid to the existing request for proposals (“RFP”) process governed by state and county agencies throughout California, whereby ICS providers are engaged in vigorous competition for correctional facility contracts. Reflecting the statutory imperative of “[p]romot[ing] competition among regulated public utility suppliers in order to enhance economic efficiency in the procurement of . . . telecommunications service provider, and telephone corporation contracts and contracts of their commission-regulated subsidiaries and affiliates,”¹⁶ the competitive bidding process militates against concentration of market power through the periodic solicitation of ICS from a variety of vendors. Delineating highly specific economic constraints and institutional requirements, the RFP process provides a

¹⁶ Cal. Pub. Util. Code § 8281(b)(2)(B).

far more responsive and adaptable means of addressing correctional facility needs than uniform statewide regulations.

The current RFP process provides the mechanism best suited to addressing ICS policy goals, while still accounting for the particular cost constraints and institutional demands of individual correctional facilities. The County of Santa Clara, for example, has promulgated some 80 recommendations for jail reform, touching on subjects ranging from inmate healthcare to grievance policies and procedures.¹⁷ One such recommendation directs the Sheriff's Office to "ensure that the costs of phone calls are reasonable and review the feasibility of providing free phone calls," while assessing the overall availability of phones to inmate populations.¹⁸ The Sheriff's Office has complied by working with the Board of Supervisors to implement a series of RFP objectives for ICS, including "[t]he best value to the County in the form of an inmate telephone security system and security support, including call monitoring, call recording and storage, and call recording management and retrieval system," lowest possible per-minute call and called party costs, and full cost recovery.¹⁹ Resulting RFPs will necessarily implement these objectives according to prevailing cost, security, and technological considerations, offering a means of implementing key policy considerations within the context of conditions specific to the County of Santa Clara. Prospective statewide regulation by the Commission cannot, by definition, achieve this level of granularity and specificity, thereby imperiling the realization of critical regional and local concerns.

¹⁷ County of Santa Clara, Jail Reforms, Summarized Recommendations by Category (Aug. 28, 2020), <https://www.sccgov.org/sites/jr/summarized-recommendations/Pages/home.aspx>.

¹⁸ County of Santa Clara, Jail Reforms, Inmate Services (ISV) (Aug. 28, 2020) ("ISV Reforms"), <https://www.sccgov.org/sites/jr/summarized-recommendations/Pages/Inmate-Services.aspx>.

¹⁹ ISV Reforms.

2. Should the Commission set rate caps for intrastate calling for incarcerated people, including video calls?

GTL urges the Commission, in light of the diverse sizes, locations, service needs, populations, and security considerations inherent in California’s correctional system, to refrain from imposing a one-size-fits-all ICS rate regime.

Critical to this is the fact that “inmate calling services, largely for security reasons, are quite different from the public payphone services that non-incarcerated individuals use.”²⁰ As the FCC recognized nearly twenty-five years ago, “while one function of the service is to provide communications service to the inmate population, the concerns and requirements of corrections authorities are different and often in conflict with those associated with the provision of basic telephone services.”²¹ Inmate telephone systems within correctional facilities, unlike their general public consumer-facing counterparts, have long necessitated the use of complex and costly security elements, such as automated voice-processing systems for call screening, advanced blocking mechanisms, real-time recording systems that must store terabytes of data for easy retrieval, monitoring to evade restrictions on call-forwarding or three-way calling, voice overlays identifying calls and disclosing that calls are recorded, detailed reporting systems, biometric caller verification, fraud control features, and more.²² Correctional facilities and inmate calling service providers therefore must “balance the laudable goal of making calling services available to inmates at reasonable rates . . . with necessary security measures and costs

²⁰ *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, 17 FCC Rcd 3248, ¶ 9 (2002) (“2002 Order on Remand”).

²¹ *Petition for Declaratory Ruling by the Inmate Calling Services Providers Task Force*, 11 FCC Rcd 7362, ¶ 25 (1996).

²² *See 2002 Order on Remand* ¶ 9.

related to those measures.”²³ In the quarter-century since the FCC undertook its examination of ICS, new “concerns and requirements” have emerged, from challenges such as illicit wireless devices and the use of contraband-carrying drones²⁴ and new technologies like inmate tablet systems and integrated prison management systems. To remain abreast of the developments, prison administrators must be afforded the ability to structure rates commensurate with these competing priorities.²⁵

The costs associated with security and public safety requirements established by a particular correctional facility cannot be reduced to a single rate formula. The security and advanced communications needs of each correctional facility vary dramatically depending upon numerous interrelated variables, including the size and location of the facility, the level of security needed, the length of incarceration and other characteristics of the inmate population, as well as the amount of money local administrators have and choose to spend on security features. A uniform set of statewide ICS rates would ignore this complex interplay between functionality, affordability, and institutional security – as well as the concomitant relationship between ICS, telecommunications service providers, and governing body policies and budgets – to the detriment of public safety.

The importance of delegating ICS rate-setting ability to correctional facilities is evinced

²³ 2002 Order on Remand ¶ 72.

²⁴ See, e.g., Kristen Powers, “Drones smuggling drugs, contraband into Kern Valley State Prison,” Eyewitness News (Mar. 16, 2018), <https://bakersfieldnow.com/news/local/drones-smuggling-drugs-contraband-into-kern-valley-state-prison>.

²⁵ Cf. *Bell v. Wolfish*, 441 U.S. 520, 547 (1979) (“[T]he problems that arise in the day-to-day operation of a corrections facility are not susceptible of easy solutions. Prison administrators therefore should be accorded wide-ranging deference in the adoption and execution of policies and practices that in their judgment are needed to preserve internal order and discipline and to maintain institutional security.”).

by the CDCR's own representations before the FCC. In 2013, the FCC was considering whether to impose interstate calling rate caps on ICS providers.²⁶ While the CDCR favored "fair rates for inmate telephone usage," it noted the deleterious effect such caps would have "on the safety of those who work and are incarcerated in California's 33 adult prisons, as well as on public safety." Specifically, the CDCR highlighted the relationship between the income it received from ICS calls and its ability to afford to install and maintain a managed access system ("MAS"), a vital means of combatting contraband wireless communications amongst inmates. With over half the income from such calls at stake, the CDCR observed, "a necessary tool to fight prison-directed crime and harassment of victims may be lost." The "crucial public safety and institutional security implications" identified by the CDCR have not abated in the years that followed, nor has the need for correctional facility administrators to allocate limited budgets with respect to them diminished.²⁷

Two recent RFPs, issued by the Counties of Santa Clara and Mendocino, illustrate the real-world economic impediments to establishing uniform ICS calling rates. The former sought applications for the installation and support of a comprehensive Jail Inmate Services Program ("JISP") communications system, consisting of ICS and an Inmate Tablet Services Platform, that would serve a jail system classed as the fifth-largest in the state and "one of the 20 largest systems in the United States."²⁸ The JISP was intended to replace a legacy telecommunications system consisting of 677 standard inmate telephones (and 81 telephone devices for the deaf and

²⁶ See *Rates for Interstate Inmate Calling Services*, 27 FCC Rcd 16629 (2012).

²⁷ WC Docket No. 12-375, *Rates for Interstate Inmate Calling Services*, Comments of the California Department of Corrections and Rehabilitation (Mar. 25, 2013).

²⁸ County of Santa Clara Request for Proposal RFP-PRO-FY18-0078, "Jail Inmate Services Program," 3-4 (Nov. 22, 2017) ("Santa Clara RFP").

hard-of-hearing) and provide enhanced communications capabilities for an average daily population of some 3,600 inmates.²⁹ Accordingly, the Santa Clara RFP included 45 pages of technical and functional requirements and desired JISP features and functionality, including advanced connectivity features and provisions for future upgrades.³⁰ The Mendocino County RFP, on the other hand, concerned an population of 320 adult and juvenile inmates served by 57 telephones, to which the County sought to add six, and 10 educational tablets.³¹ Consequently, it included only 20 pages of system requirements and technical specifications.³² Given these clear differences in project scope, issuer needs, technical complexity, and inmate population size between these RFPs, it is neither surprising that rate variations exist among different types of correctional facilities in the state nor reasonable to conclude that one-size-fits-all rate regime is economically or technically viable.

Again, California’s own law enforcement and correctional agencies echo this conclusion. As the California Sheriffs’ Association explained to the FCC,

there are many other characteristics here that must be considered, making it impossible to set a single rate. California alone contains correctional facilities of all shapes and sizes, and the size and type of facility are probably the easiest factors to identify. To provide a small bit of insight into this notion, the Sierra County jail has a rated capacity of 14 inmates, while the jails comprising the Los Angeles County correctional system have a combined rated capacity of over 14,000 inmates. Smaller facilities are unlikely to enjoy the economies of scale experienced by their larger counterparts. Jail facilities generally witness much higher rates of inmate turnover than prisons do, making costs in that regard more likely to vary. Security needs and diversity of inmate classification will drive costs at different levels. The age of a facility can also affect infrastructure and

²⁹ Santa Clara RFP at 4, 7.

³⁰ See Santa Clara RFP at 21-45, 94-109.

³¹ County of Mendocino Request for Proposal RFP No. SO-2019-001, “Inmate Communications Services for County Jail and Juvenile Hall,” 9 (June 24, 2019) (“Mendocino RFP”).

³² See Mendocino RFP at 9-28.

other characteristics that must be considered. Because of the immutable reality that no two facilities face an identical set of issues, any action by the FCC should acknowledge this inherent challenge and allow ICS and facility needs to be the driving forces. This is much more important and realistic than attempting to craft a single “solution” for uniformity’s sake.³³

A statewide rate regime would also have demonstrable effects on the quality and quantity of services offered by correctional facilities, as negotiated ICS rates presently provide income critical to prisoner rehabilitation. By law, “any money, refund, rebate, or commission received from a telephone company or pay telephone provider when the money, refund, rebate, or commission is attributable to the use of pay telephones which are primarily used by inmates while incarcerated” must be deposited into an inmate trust fund, which “shall be expended by the sheriff primarily for the benefit, education, and welfare of the inmates confined within the jail.”³⁴ In this context, the California State Sheriffs’ Association has observed, “ICS contribute to inmates maintaining ties with their families and communities and provides a crucial funding source for sorely needed rehabilitation programs and resources for which there otherwise would not be funding available.” Uniform rates would thus “compromise the funding for these important services and reverse the advances made in offender outcomes.”³⁵

³³ WC Docket No. 12-375, *Rates for Interstate Inmate Calling Services*, Comments of the California Sheriffs’ Association (Mar. 22, 2013).

³⁴ Cal. Pen. Code § 4025(d)-(e).

³⁵ WC Docket No. 12-375, *Rates for Interstate Inmate Calling Services*, Comments of the California Sheriffs’ Association (Dec. 29, 2014); *see also* WC Docket No. 12-375, *Rates for Interstate Inmate Calling Services*, Comments of the Chief Probation Officers of California (Jan. 1, 2015) (“The elimination of site commissions and related cap on phone call rates will significantly impact the current revenue to the Ward Welfare Fund and therefore decrease the money available to help cover the cost of key services, purchase incentives and rewards for youth, and establish recreational programs. In most cases, these program costs cannot be absorbed into existing budgets. Counties will be faced with program reductions or increasing general fund revenues, the latter of which may not be a viable fiscal option.”). *See also* September 30, 2020 statement from the Office of Governor, returning SB 555 without signature, stating in part, “I cannot support this bill in its current form. I am concerned it will have the unintended consequence of reducing important rehabilitative and educational programming for individuals in

In sum, capping intrastate ICS rates, in contravention to the unique function of and constraints upon the services associated with them, would limit severely the availability of the enhanced public safety, security and investigative services correctional facilities demand; squelch a vital source of funding for inmate welfare expenditures; and disincentivize the development and deployment of additional services. While GTL appreciates the Commission's continued interest in ensuring just and reasonable ICS calling rates, pursuant to Cal. Pub. Util. Code § 451, such an approach would run afoul of another portion of that statute: the requirement that public utilities "furnish and maintain such adequate, efficient, just, and reasonable service, instrumentalities, equipment, and facilities, including telephone facilities . . . as are necessary to promote the safety, health, comfort, and convenience of its patrons, employees, and the public."

GTL maintains that the aforementioned competitive bidding process, as overseen by government bodies responding to the specific needs of the correctional facilities they oversee, can and do generate rates just and reasonable with respect to the populations they manage and services for which they contract. The FCC currently caps interstate ICS rates at \$0.25 per minute for collect calls, and \$0.21 per minute for prepaid collect and debit calls.³⁶ GTL's contract with the CDCR specifies intrastate ICS rates far below these maximums. Effective January 1, 2020, adult institutions assess a per-minute rate of \$0.076 for all local and intrastate collect calls (70% less than the FCC maximum) and \$0.076 for all local and intrastate prepaid collect and debit calls (64% less than the FCC maximum); youth institutions charge a \$0.00 per-minute rate for all local, intrastate, and interstate calls.³⁷ This strongly militates against reliance on any a priori

custody."

³⁶ 47 CFR § 64.6030.

³⁷ GTL, "Notice to Family and Friends: California Department of Corrections and Rehabilitation" (Jan. 1, 2020), <https://www.gtl.net/wp-content/uploads/2019/12/GTL->

assertion of “market failure.”

Regardless of the Commission’s decision on the adoption of ICS rate caps, regulation of VVS and services such as messaging is outside the scope of its jurisdiction. As the OIR notes, the Commission’s jurisdiction over ICS providers stems from the California Constitution, which subjects “[p]rivate corporations and persons that own, operate, control, or manage a line, plant, or system for the . . . transmission of telephone and telegraph messages” to the control of the legislature.”³⁸ Key to the implementing statutes in the California Public Utilities Code is the centrality of “communication by telephone,” Cal. Pub. Util. Code § 233, as provided through a “telephone line,” Cal. Pub. Util. Code § 234(a). There is no basis to extend such legislative authorities to video visitation services, which operate over broadband facilities.³⁹ Given the Commission’s sharply limited jurisdiction and control over Voice-over-Internet Protocol and Internet Protocol enabled services, along with the classification of video conferencing service as an advanced communications service and an information service under the Communications Act of 1934, as amended (the “Act”),⁴⁰ there is no lawful basis for the promulgation of VVS rate caps.⁴¹

CDCR_Rate%20Sheet_Eng_January_1_2020-r2.pdf.

³⁸ Cal. Const., art. XII, §§ 3.

³⁹ The GTL VisitMe™ VVS, for example, is provided through non-telephonic devices, including Windows and Macintosh personal computers, Android tablets, and Android smartphones.

⁴⁰ 47 U.S.C. § 153(1) (including “interoperable video conferencing service” in the definition of “advanced communications services”); *Framework for Broadband Internet Service*, 25 FCC Rcd 7866, ¶ 107 (2010) (“we do not intend to address in this proceeding the classification of information services such as e-mail hosting, web-based content and applications, voicemail, interactive menu services, video conferencing, cloud computing”); *see also* 47 U.S.C. § 153(27) (defining “interoperable video conferencing service” to mean “a service that provides real-time video communications, including audio, to enable users to share information of the user’s choosing”).

⁴¹ The FCC has preempted nearly all state regulation of information services – *see, e.g., California v. FCC*, 39 F.3d 919 (9th Cir. 1994) – as this Commission has recognized. *See, e.g., R.17-06-023, Order*

3. Should the Commission limit the types of additional fees providers can charge users of calling services for incarcerated people?

Pursuant to the points delineated above, GTL believes that a demarcation of permitted ancillary service charges is unnecessary.

As the Commission is aware, the FCC has promulgated a schedule of ancillary service charges ICS providers may lawfully charge their customers. Three of these charges (Automated Payment Fees, Live Agent Fee and Paper Bill/Statement Fee) are monetarily capped on a per-use basis, while two others (Single-Call and Related Services, and Third-Party Financial Transaction Fees) are passed through exactly to consumers, with no markup.⁴² Because the former class of ancillary service charges is not readily divisible into “interstate” and “intrastate” categories – as, for example, an account funding transaction assessed an Automated Payment Fee may subsequently facilitate any combination of local, intrastate, interstate, or international calling – the FCC maximums serve to check ancillary service charges nationwide. As for the amount of such maximums, the FCC instituted them after a comprehensive nationwide Mandatory Data Collection from ICS providers,⁴³ weighing the costs associated with the provision of ancillary services and fair compensation for ICS providers against the interests of consumers.⁴⁴

Instituting Rulemaking to Consider Whether Text Messaging Services Are Subject to Public Purpose Program Surcharges, D.19-01-029, Decision Determining that Public Policy Surcharges and User Fees will not be Assessed on Text Messaging Service Revenue (Jan. 31, 2019) (refusing “to exercise authority under state law to assess surcharges or user fees on text messaging services which are classified as ‘information services’ under the Act”). Cf. *Global Tel*Link v. FCC*, 866 F.3d 397, 415 (D.C. Cir. 2017) (vacating VVS components of FCC’s annual ICS reporting requirements as “too attenuated” to the FCC’s statutory authority, per the FCC’s failure to “explain how its statutory authority extends to video visitation services as a ‘communication[] by wire or radio’ under [47 U.S.C.] § 201(b) for interstate calls or as an ‘inmate telephone service’ under § 276(d) for interstate or intrastate calls”).

⁴² See 47 CFR § 64.6020.

⁴³ See 2015 ICS Order ¶¶ 15, 31.

⁴⁴ See 2015 ICS Order ¶¶ 161-192.

Commission action would therefore be duplicative at best with respect to this carefully crafted framework. Separately, GTL also notes that the applicability of ancillary service charges vary with the account funding method selected by a consumer; a consumer who chooses to fund his or her calling account by check or money order is never assessed an ancillary service charge.

GTL also emphasizes that the availability and extent of ancillary services varies from facility to facility, such that the actual charge may be lower (or altogether absent) in particular correctional institutions. Pursuant to the multi-year contractual model that undergirds the ICS industry, providers offer specially tailored hardware, software, and support services to meet site-specific needs, such as institution size and location, security and monitoring concerns, state regulations and local policy, and budgetary capacity.⁴⁵ Some facilities may permit inmates to fund ICS calls only through their trust funds, while others may provide for more extensive forms of payment.⁴⁶ GTL's own California Price List specifies that Automated Payment Fees are assessed on a where-available basis, reflecting the diversity of payment options amongst various correctional facilities.⁴⁷ Within the scope of the FCC's ancillary charge framework, these individual arrangements and agreements should be respected, lest a statewide, one-size-fits-all pronouncement upset the carefully balanced security and budgetary considerations of particular facilities.

⁴⁵ See, e.g., Global Tel*Link Corporation, Price List of Detariffed/Nonregulated Services Applicable to Institutional Calling Services, California Price List No. 1, p. 20.1 (Oct. 26, 2017) ("California Price List") (noting that "[s]ervice is offered on a contractual basis to meet specialized requirements of correctional facilities").

⁴⁶ See, e.g., WC Docket No. 12-375, *Rates for Interstate Inmate Calling Services*, Comments of Idaho Department of Correction, p. 2 (Nov. 20, 2014) (directing ICS providers to maintain "staffed call centers and web-based access to the public so they can set up and fund accounts" and "accept most forms of payment including major debit and credit card brands for which the ICS provider is often charged a fee for accepting").

⁴⁷ See California Price List at 22.

4. Should the Commission act to protect calling services for incarcerated people with communications disabilities by limited charges for inmate calling services calls involving the use of text telephones (TTY)?

GTL provides text telephone (“TTY”) and telecommunications relay service (“TRS”) calls through a third-party provider. To the extent that the Commission seeks to examine charges for TTY communication provided by such third-party entities, it must necessarily expand the scope of this docket to consider them. With respect to GTL’s contract with the CDCR, all assistive forms of communication – TTY, Telecommunications Device for the Deaf (“TDD”), Video Relay, and Sign-Language Video Calls – do not incur a charge, obviating any need for Commission regulation.⁴⁸

III. CONCLUSION

For the foregoing reasons, the Commission should refrain from exercising its authority to regulate ICS companies, maintaining the vibrant competitive marketplace that exists as present.

Respectfully submitted,

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⁴⁸ See Global Tel*Link Corporation, *User Guide for Inmate/Ward Families and Friends*, 5 (Dec. 2019), https://www.gtl.net/wp-content/uploads/2019/12/GTL-CDCR_User_Guide_Inmate_Ward_Families_and_Friends-r7.pdf